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Privatising Border Control

Ashwini Vasanthakumar^{*}

Abstract—Liberal democracies increasingly rely on private actors, from private security corporations to civilian gatekeepers, to control their borders. Privatisation in this context, as in others, attracts criticism for its attendant abuses and inefficiencies. For the most part, these criticisms focus on the consequences of privatisation, which in principle can be remedied through better institutional design and practice. Recently, scholars have advanced intrinsic arguments against privatisation. These arguments proceed as follows: (i) they identify some goods as public goods that the state must provide; and (ii) they specify what public provision consists in, such that prominent forms of privatisation are precluded. In this article, I consider whether these intrinsic arguments apply to border control. Drawing on resources from within intrinsic accounts, however, I argue that non-public actors and reasons may be useful for realising public goods, especially in those cases that implicate the interests of outsiders, such as border control.

Keywords: privatisation, Harel, immigration, border control, sovereignty, legal philosophy

1. Introduction

Liberal democracies increasingly rely on private actors to enforce their immigration laws and control their borders. Commercial airlines turn away passengers whose travel documents are suspect; a host of private individuals, including doctors, landlords and bank managers, are charged with verifying and monitoring immigration status; and private security companies detain and remove unauthorised migrants, and provide housing and food for those seeking asylum. From entry to basic welfare, to detection and to deportation, private actors have long been instrumental in enforcing states' immigration policies.¹

^{*} Lecturer in Politics, Philosophy & Law, Dickson Poon School of Law, King's College London. Email: ashwini.vasanthakumar@kcl.ac.uk. I am grateful to Jonathan Peterson, workshop participants in Edinburgh, Bristol, and the National University of Singapore, and the helpful suggestions from the reviewers and the Journal's Articles Editor, Richard Ekins.

¹ See eg Gallya Lahav, 'Immigration and the State: The Devolution and Privatization of Immigration Control in the EU' (1998) 24 *Journal of Ethnic and Migration Studies* 675; Georg Menz, 'The Neoliberalized State and Migration Control: The Rise of Private Actors in the Enforcement and Design of Migration Policy' (2009) 17 *Debatte: Journal of Contemporary Central and Eastern Europe* 315.

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Although normative concerns about privatisation have been explored, notably in the contexts of war and incarceration, normative theorists have paid relatively little attention to these questions with respect to migration.² They have focused on the morality of borders rather than of the particular agents involved in securing them—even as the latter increasingly invite public criticism and are poised to exercise ever more quasi-governmental control, even domination, over migrants.³ *Who* secures borders is an important but ignored element of justice in migration. The context of immigration enforcement, in turn, helps illuminate arguments against privatisation more generally, given that border control touches on a core sovereign function, enlists a wide range of private actors and affects important interests of individuals who are by definition outside the political community.

Outsourcing immigration enforcement is justified exclusively in terms of efficiency.⁴ Normative criticism focuses on the abuses enabled by privatisation:⁵ the violence and the lack of due process in privately run detention centres;⁶ the discrimination that requiring private citizens to determine immigration status invites;⁷ and the complex chains of command, responsibility and liability that frustrate attempts to hold wrongdoers accountable.⁸ In short, both proponents and detractors focus on the *consequences* of privatisation. Criticisms that emerge from these consequences focus on contingent moral problems, problems that in principle are remediable through better drafted contracts and more effective mechanisms of oversight. In any event, it is far from clear that public actors secure better results.⁹

Recently, scholars have advanced *intrinsic* arguments against privatisation that hold irrespective of its outcomes, and that aim to make sense of the intuitive disquiet it invites. These arguments identify some goods as public, in

² For helpful overviews of recent normative scholarship of migration see Joseph Carens, *The Ethics of Immigration* (OUP 2016); David Miller, *Strangers in our Midst* (Harvard UP 2017); Sarah Fine and Lea Ypi (eds), *Migration in Political Theory: The Ethics of Movement and Membership* (OUP 2016).

³ See eg Stephanie J Silverman, 'Detaining Immigrants and Asylum Seekers: A Normative Introduction' (2014) 17 *Critical Review of International Social and Political Philosophy* 600; Iseult Honohan, 'Domination and Migration: An Alternative Approach to the Legitimacy of Migration Controls' (2014) 17 *Critical Review of International Social and Political Philosophy* 31; Alex Sager, 'Immigration Enforcement and Domination: An Indirect Argument for Much More Open Borders' (2017) 70 *Political Research Quarterly* 42. Notably, these arguments are not focused on the role of private actors in immigration control.

⁴ See eg Tom Papworth, 'Harnessing Entrepreneurship to Secure Britain's Borders: The Case for Privatising the Passport and Immigration Functions of UK Border Force' (Centre for Policy Studies, February 2016).

⁵ Non-normative criticism focuses on the inefficiencies introduced by private actors, eg the ways in which for-profit entities have incentives to misreport expenses or meet targets of enforcement without regard for the purposes of enforcement. I will not examine this set of criticisms.

⁶ See Melanie McFadyen, '£...per Incident' (2006) 28(22) *London Review of Books* 33; Thomas Gammeltoft-Hansen, 'Can Privatization Kill?' *New York Times* (New York, 1 April 2012).

⁷ 'Landlord Checks on Illegal Immigrants Risk 'Everyday Racism', Says Labour' *The Guardian* (London, 11 October 2015).

⁸ Sager (n 3) 43–5.

⁹ Publicly run prisons and detention centres similarly admit of abuse, although they are more open to public scrutiny. Sager concludes that public bodies impose a form of 'bureaucratic domination'. Sager (n 3). See also *Review into the Welfare in Detention of Vulnerable Persons: A Report to the Home Office by Stephen Shaw* (January 2016) (Shaw Report).

that they must be provided by the state; and then they place conditions on what counts as provision by the state, requiring that frontline agents be connected to political principals in ways that preclude prominent forms of privatisation. These accounts provide fresh vigour for more fundamental objections to privatisation at a time when its expansion seems inevitable—and especially so in the context of border control.

In this article, I consider whether these recent arguments can provide *intrinsic* objections to privatisation in border control. I conclude, however, that these accounts ultimately fail. Through a close reading of the arguments advanced by Avihay Dorfman and Alon Harel, I argue that the successful provision of certain goods relies on the *reasons* for which agents provide them rather than on the status of the agents; that the scope of permissible reasons does not admit of a clear binary between the public and private; and that the state does not enjoy a monopoly on public reason—the public good—and especially not in those cases that involve justice beyond its borders and the interests of those who are not its subjects. In contexts like border control, then, the state has a blind spot. In fact, I suggest, intrinsic arguments against privatisation may point to the roles non-state actors can play in advancing reasons relevant to the public interest but inaccessible to the state. These conclusions do not necessarily speak to the vast literature on privatisation; rather, they engage closely with recent arguments that promise to preclude privatisation intrinsically, and that seem especially relevant to border control.

In the next section, I elaborate on the forms of privatisation in border control under scrutiny and situate these within the context of privatisation more generally. Section 3 critically reconstructs intrinsic arguments against privatisation, focusing on arguments from Avihay Dorfman and Alon Harel. Section 4 outlines the roles of private actors and reasons in providing public goods. Section 5 concludes.

2. Privatisation

Privatisation is a commonplace: private actors fight in international wars, engage in humanitarian operations, police streets, run prisons, school children and provide social welfare services. Privatisation arises through a number of avenues: the state can provide public goods and services, but delegate their delivery to private actors; it can support a private market, either by incentivising private actors to produce certain goods or by subsidising their acquisition; or it can withdraw from the provision of these goods and services altogether, leaving it entirely up to individuals and the private market.¹⁰ This last enables entrepreneurial activity among private actors, some of which is countenanced by the state and some of which is undertaken in defiance of it.

¹⁰ Malcolm Thorburn, 'Reinventing the Night-Watchman State' (2010) 60 U Toronto LJ 428.

Privatisation has also expanded in the domain of border control. Although we tend to focus on territorial boundaries, borders arise whenever an individual's movements are controlled and need not correspond to the state's territorial boundary.¹¹ The proliferation of enforcement agents therefore engenders a proliferation of borders situated outside, at and within a state's territorial boundary. In the immigration context, this proliferation arises primarily through state delegation of enforcement to private actors.¹² I focus on three sets of private actors to whom the state *deliberately* outsources border control: private security corporations (PSCs), the volunteer sector and civilian gatekeepers. Arguably, this mode of privatisation is the least objectionable—it only contemplates privatising a good's delivery whilst retaining provision in public hands—but it would still be precluded by intrinsic arguments against privatisation.

PSCs dominate the detention estate:¹³ the network of designated immigration removal centres (IRCs), holding facilities intended for short-term use, port detention and prisons. In the United Kingdom, five private contractors run seven of the ten designated IRCs and the two short-term holding facilities, and provide the Home Office's escorting or transporting services. These large for-profit enterprises typically are multinational corporations involved in a number of services, ranging from running prisons to providing security at shopping centres and to providing auxiliary services, like food and sanitation, in combat.

The volunteer sector, which includes religious bodies and advocacy organisations, as well as private citizens, plays a number of roles in immigration enforcement. Charities may be involved in detention; for example, the children's charity Barnardo's partners G4S, a PSC, to run a detention centre housing families and young children.¹⁴ Volunteers deliver goods, such as food, education and basic provisions, to migrants—consider here the camps in Europe aiding refugees from Syria and elsewhere. And civil society organisations are involved in language classes, skills training and other services aimed at the integration of immigrants into the host society. These latter organisations

¹¹ Elspeth Guild cited in Nick Vaughan-Williams, 'Borderwork beyond Inside/Outside? Frontex, the Citizen-Detective and the War on Terror' (2008) 12 *Space and Polity* 63. Vaughan-Williams points out that borders increasingly are disaggregated from this boundary. Border control often takes place outside a state's territorial boundaries—for example, UK and US immigration control is situated within French and Canadian territory, respectively, or the efforts of Frontex to monitor would-be migrants from the West African coast. Borders also extend within the physical boundaries of the state because the different terms of entry continue to be enforced—for example, whether an immigrant has a right to work or to avail herself of public welfare support, or has to report periodically to the authorities.

¹² There is also a lot of scope for private entrepreneurship. Volunteers *supplement* state provision, eg by assisting migrants, providing language assistance or otherwise aiding in the integration of newcomers. Private actors may *compensate* for state inaction, eg by rescuing migrants on the high seas. And entrepreneurs can *usurp* the state's prerogatives. Vigilantes police the border and detain suspected unauthorised migrants, even when doing so is unlawful, and individuals enable unauthorised migration, either as criminal traffickers or as civil disobedients who subvert immigration restrictions they deem unjust.

¹³ The Shaw Report (n 9) 33, Table 2.12.

¹⁴ See Barnardo's, 'Cedars: Recommendations for a New Government' (March 2015); Frances Webber, 'Barnardo's and G4S, Partners in the Child Detention Business' *OpenDemocracy* (18 May 2014).

may have formal arrangements with the state, be financially supported by the state or operate entirely independently of the state.

Finally, the state relies on civilians to monitor immigrants' compliance with the terms of their entry, to detect those whose presence is unauthorised and to make this presence untenable. These civilian gatekeepers are called upon to monitor immigration status in the course of their daily lives. Employers must ascertain and monitor the migration status of their employees, medical practitioners those who seek assistance and landlords those to whom they may rent out properties. In many respects, civilian gatekeepers are essential for immigration enforcement: they are likely to be more efficient and less visible than any state-administered system of regulation.¹⁵

Note the following about private actors engaged in border control. First, there is not always a clear distinction between private and public actors. Private actors may be involved in the formulation of public policy, for example as advisers or consultants, and they are involved in the execution of policy in a number of roles, ranging from direct providers to monitors. Secondly, there is a great deal of variety amongst private actors, a category that includes charities, profit-maximising enterprises and religious bodies motivated by sectarian commitments. And finally, it is not merely incidental that an actor is private. In some cases, this status is essential to their ability to provide a particular good. Civilian gatekeepers' effectiveness relies upon their invisible presence in civil society, for example, and civil society organisations that help immigrants integrate into the broader social and cultural life of the community do so in virtue of the fact that they are *not* state actors but a part of civil society. Some elements of immigration enforcement and policy, then, may be intrinsically private.

The use of these private actors faces three types of criticism. The first focuses on the consequences of privatisation for migrants. Private detention facilities come under criticism for the human rights abuses and other harms detainees suffer. These concerns arise in public detention facilities as well.¹⁶ Arguably, private contractors' drive to maximise profits and their ultimate accountability to shareholders incentivises them to cut corners. And the complex chains of command and control between the state, private contractors and sub-contractors frustrate effective accountability, thereby providing a more permissive environment for such abuses. Civilian gatekeeping can also jeopardise the equal treatment and dignity of migrants—or those who are deemed foreign by dint of their appearance or accent. Insofar as individuals are

¹⁵ Their efficacy has been called into question. Civilian enforcers often have incentives to look the other way—this is particularly the case with employers who exploit and benefit from unauthorised workers. Jeffrey Manns, 'Private Monitoring of Gatekeepers: The Case of Immigration Enforcement' (2006) *U Ill L Rev* 887.

¹⁶ In the context of prisons, for example, empirical evidence reveals that public prisons can underperform their private counterparts. See eg B Crewe, A Liebling and S Hulley, 'Staff-Prisoner Relationships, Staff Professionalism and the Use of Authority in Public and Private Sector Prisons' (2014) *40 Law and Social Inquiry* 309.

penalised for transacting with unauthorised migrants, civilian gatekeeping erodes trust and civility between citizens, and the complexity of immigration rules and forms of identification deter individuals from transacting with authorised migrants or those who might be migrants. This not only encourages unequal outcomes, but also licenses discriminatory behaviour that can be engaged in under the guise of gatekeeping.

The second set of criticisms concern the consequences for the state. Far from gains in efficiency, privatisation is often accused of spiralling costs that unduly burden the public purse. More insidiously—and more speculatively—the creation of powerful constituencies invested in border control distorts public policy making. In particular, it is claimed, these vested interests encourage expansive policies of detention and detection, and exacerbate public anxieties over immigration.¹⁷

The final set of criticisms focus on the consequences of enforcement for the private actors themselves. Involving charities and religious organisations in the enforcement of unjust or harmful migration policies can compromise the ends of these organisations and the values they seek to promote. This is especially evident when charities help run detention centres,¹⁸ but these concerns also arise when volunteers provide basic services in temporary refugee camps, thereby supplementing—and arguably sustaining—an inadequate state response or unjust migration policy. Similarly, drafting civilian gatekeepers into the service of the state conflicts with the professional ethics and virtues associated with a number of roles. Medical practitioners and university lecturers, for example, have a particular relationship with their patients and students, respectively: they are entrusted with confidential and sensitive information, owe duties of care, and are directed to act in the best interests of the individuals under their care. Refusing to provide necessary medical care or policing students' attendance intrudes into this relationship and inhibits its attendant virtues and values.

As varied as these criticisms are, they remain contingent moral objections that focus on outcomes: for the individuals subject to migration controls, for the civic and professional relationships into which the state intrudes, and for the state and the integrity of its policy making institutions.¹⁹ In principle, these concerns can be addressed through better institutional design and oversight,

¹⁷ See eg Sharita Gruberg, 'How For-Profit Companies are Driving Immigration Detention Policies' (Center for American Progress, 2015); Sharon Dolovich, 'State Punishment and Private Prisons' (2005) 55 *Duke LJ* 429, 525.

¹⁸ See eg Frances Webber, 'The Fading Red Line: Barnardo's Role in the Detention and Removal of Children' (The Institute of Race Relations, 2014).

¹⁹ This does not include criticisms that focus on particular policies rather than the agents tasked with their implementation. For example, in the context of migration, detention is appropriate only as an administrative function that is necessary prior to removing individuals. It should not be prolonged or punitive, should be used as a last resort and should not be used for those who are especially vulnerable. Similarly, the use of civilian gatekeepers prevents unauthorised migrants from accessing a number of basic goods, such as healthcare and police protection. It pushes them further into the shadow economy, leaving them vulnerable to exploitation at the hands of would-be employers, landlords and traffickers.

and by limiting privatisation to certain actors. That is, these objections focus on particular *forms* of privatisation rather than on privatisation *as such*. So concerns that focus on outcomes fail to provide dispositive arguments against privatisation. They also fail to articulate the deeper reservations, however inchoate, that many have about the proliferation of privatisation. From providing utilities and operating public transportation to running public schools and administering social welfare payments and to performing functions associated with the core of sovereignty, like policing, prisons and national defence, private actors are increasingly central, if not dominant. Besides contingent moral problems related to their outcomes, these examples of outsourcing, especially in the latter domain, are seen to raise more fundamental concerns about the nature and role of the state and the collective provision of public goods. Intrinsic arguments against privatisation engage with these deeper concerns.

3. *Intrinsic Arguments against Privatisation*

To be sure, these are not the only criticisms of privatisation. Privatisation is also criticised because it trades on inappropriate or unattractive motivations, especially mercenary ones;²⁰ because it is inapt for particular types of goods, and tends towards their corruption;²¹ and because it is in fact incapable of providing intrinsically public goods.²² I focus on these intrinsic arguments, especially those of Avihay Dorfman and Alon Harel,²³ because intrinsic arguments seem most apt to the context of border control and are the most comprehensive in scope. Intrinsic arguments proceed, roughly, in two steps: first, they identify certain goods that can only be provided by a public agent; then they identify criteria for what public provision consists in and which will thereby preclude certain forms of privatisation. On its face, border control is precisely the type of good the state must provide all the way down. I argue, however, that ultimately these accounts suggest not only that private actors are *permissible* in immigration enforcement, but possibly even helpful.

²⁰ James Pattison, 'Deeper Objections to the Privatisation of Military Force' (2010) 18 *Journal of Political Philosophy* 425; James Pattison, 'Outsourcing the Responsibility to Protect: Humanitarian Intervention and Private Military and Security Companies' (2010) 2 *International Theory* 1, 10–13.

²¹ See eg Michael Sandel, *What Money Can't Buy: The Moral Limits of Markets* (Penguin Books 2012).

²² Chiara Cordelli, 'The Intrinsic Wrong of Privatization' (unpublished manuscript on file with the author) 6–14. Cordelli critiques each of these, which she refers to as the motivation, corruption and intrinsic arguments. Cordelli describes her account as the 'omnilaterality argument' and distinguishes it from Dorfman and Harel's intrinsic argument. These accounts are sufficiently similar, especially when Dorfman and Harel's 'inherently public goods' are understood axiologically, that I treat them both as intrinsic arguments against privatisation.

²³ Avihay Dorfman and Alon Harel, 'The Case against Privatisation' (2013) 41 *Philosophy & Public Affairs* 67; Avihay Dorfman and Alon Harel, 'Against Privatisation As Such' (2016) 36 *OJLS* 400; Alon Harel, *Why Law Matters* (OUP 2014). I also consider Chiara Cordelli (n 22) and Chiara Cordelli, 'Privatization without Profit?' in J Knight and M Schwartzberg (eds), *Privatization, NOMOS LX* (NYU Press 2018), but focus on Dorfman and Harel's account as it is the most elaborated upon.

A. *Inherently Public Goods*

Dorfman and Harel argue that there are ‘inherently public goods’: goods whose value can only be realised if they are provided by the state. For such goods, the argument in favour of state provision is not instrumental: it is not that public provision is likely to be *better*; rather, the provision of the good is agent-specific and cannot, conceptually, be provided by agents other than the state.²⁴

There are two rationales for why a good is inherently public. The first is ontological:²⁵ an enterprise is agent-dependent as a matter of conceptual definition, whereby the enterprise and agent are constitutive of one another.²⁶ Ontological arguments are largely stipulative.²⁷ They may be useful for identifying the constitutive and contingent features of particular practices and tracking changes in these practices, but they do not by themselves explain or justify these transformations. Even if there were broad agreement on the existence of a category of ‘state practice’, more is needed to tell us why particular practices and agents fall into this category.

This is supplied by the second, axiological, rationale: it claims that performance by a particular agent is constitutive of the value provided by performance. Take criminal punishment. Dorfman and Harel argue that criminal punishment has a communicative function that can be performed only if the communicating agent is in a normatively superior position to the target.²⁸ Even if one does not subscribe to their communicative theory of punishment, the state is still the only appropriate actor given the *method* of communication: the hard treatment of punishment. Punishment entails the infringement of important interests, and only the state, as a public entity, can ensure that such infringements are impartial, in that they do not serve sectarian interests, and are reasonable, in that they are narrowly tailored to achieve the relevant goal.²⁹ These conditions not only restrain state action, particularly when it implicates important interests, but also establish equal freedom amongst citizens. Cordelli pursues this line of reasoning. She focuses on cases where the ‘normative situation of citizens’ is changed and argues that only the state can reason

²⁴ Dorfman and Harel are not opposed to privatisation in all domains, or to private actors performing functions orthogonal to the provision of ‘inherently public goods’. Thus, for example, private actors could provide electricity or provide food for prisons.

²⁵ I borrow Laura Valentini’s helpful distinction between ontological and axiological claims. See Laura Valentini, ‘On the Value of Constitutions and Judicial Review’ (2017) 11 *Criminal Law and Philosophy* 817.

²⁶ Dorfman and Harel use the examples of blood feud and war. Blood feuds, Harel argues, cannot be performed by anyone other than a male relative of the deceased; a killing by anyone else would not only be an inappropriate or impermissible blood feud, it would be no blood feud at all. Harel (n 23) 70. And in the context of the state, Dorfman and Harel argue that war is a practice that only the state can engage in: only state-deployed large-scale lethal force constitutes war. Harel (n 3) 99–103.

²⁷ See eg John Gardner, ‘The Evil of Privatization’ (2014) 3 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2460655>.

²⁸ Dorfman and Harel argue that only the state is in such a position. When private individuals subject other private individuals to the hard treatment of punishment, this hard treatment is simply private violence incapable of realising the expressive good of punishment; it does not even count as punishment.

²⁹ Malcolm Thorburn, ‘Judgment, Communication, and Coercion: What’s Wrong with Private Prisons?’ (2015) 2 *Critical Analysis of Law* 234.

publicly, ensuring that these normative changes are compatible with the equal freedom of all.³⁰ According to Cordelli, this means that citizens are governed by the omnilateral rule of the state rather than the unilateral will of an individual; they are in a state of freedom in the former and a condition of ‘un-freedom’ in the latter.

Inherently public goods are those goods whose provision implicates individuals’ important interests and, per Cordelli, changes their normative position. Only a properly public agent acting omnilaterally can provide these goods and perform these functions in a way that ensures the equal freedom of all. Now, proponents of privatisation need not deny any of this; they only deny that public decision making cannot be separated from execution, such that private actors cannot perform or execute publicly taken decisions. For intrinsic arguments against privatisation to work, it has to be the case that inherently public goods must be provided by the state *all the way down*: the state must not only decide to wage war or punish—or, in our case, enforce borders—but must also *execute* these decisions. Their argument for this centres on the inevitable discretion that agents exercise when they execute decisions, and the conditions under which this discretion is legitimately exercised.

B. *The Right Agents Acting for the Right Reasons*

When the state authorises and delegates to a frontline agent to execute a decision, the agent is called upon to exercise her ‘capacities to reason, intend, and judge’.³¹ Discretionary decision making is inevitable not only because directives, however well specified, require interpretation, but also because the public reasons underlying these directives are themselves indeterminate.³² Ultimately, the authorised agent acts for reasons *she* comes to embrace, even if she is earnestly and accurately pursuing the public interest. From the perspective of the person subject to these decisions, she is subject to the reasons of a private agent, however benignly motivated or ultimately justified.

In Dorfman and Harel’s terminology, the frontline agent in this case shows ‘fidelity by reason’: fidelity by reason calls for the agent to execute the state’s command in accordance with the state’s purposes—the ‘general good’—as she judges it to be.³³ However earnestly and impartially she reasons, and however accurately she does so, she will inevitably proceed from her conception of what that consists in.³⁴ Her actions are doings *for* rather than *of* the state.³⁵ What is required instead is that the frontline agent demonstrate what Dorfman and

³⁰ Cordelli (n 22) 3.

³¹ Dorfman and Harel, ‘The Case against Privatisation’ (n 23) 73.

³² Cordelli (n 22) 27.

³³ Dorfman and Harel, ‘The Case’ (n 23) 74.

³⁴ Dorfman and Harel, ‘The Case’ (n 23) 75.

³⁵ Dorfman and Harel, ‘The Case’ (n 23) 70. In Cordelli’s terms, they are unilateral rather than omnilateral acts. Cordelli (n 22) 30.

Harel call ‘fidelity by deference’: she suppresses entirely her private judgments about the public interest and defers to the ‘public point of view’. This can be achieved when frontline agents are embedded in particular networks or practices such that they have access to the deliberations of political actors and are subject to their control.

This ‘integrative practice’³⁶ subjects frontline agents to the practical deliberation of political actors. Political actors’ guidance is not limited to establishing the basic rules of conduct within which these agents freely operate, or to provide run-of-the-mill *ex post* accountability. Rather, an integrative practice empowers political actors to ‘influence [frontline agents’] *ongoing* deliberations and everyday actions’,³⁷ and ensures that frontline agents are embedded in ‘channels of public practical reasoning’.³⁸ Dorfman and Harel emphasise that this integration does *not* call for frontline actors to appeal perpetually to their superiors, which would be impracticable, nor does this integration rely on political actors *actually* intervening to guide the deliberation and conduct of frontline agents.³⁹ It is enough that political actors *can* intervene at any time. This integrative practice ensures, Dorfman and Harel insist, that ‘fidelity of deference’ is not incompatible with the discretion frontline agents necessarily wield.⁴⁰ In virtue of their inclusion in such an integrative practice, all actors—whatever their official designation—count as public officials whose actions carry the imprimatur of the state.⁴¹

C. Privatisation and Border Control

For privatising border control to be precluded *per se*, border control would have to be ‘an inherently public good’, and (at least some) forms of privatisation would have to be inadequately subject to an integrative practice. On its face, these two conditions are satisfied. The control of movement affects important individual interests. Depending on their reasons for movement, individuals’ fundamental rights and life chances are affected by borders. Indeed, some have argued that there is a human right to migration;⁴² others, that border control constitutes domination.⁴³ *Prima facie*, border control is an inherently public

³⁶ Dorfman and Harel refer to this as an ‘integrative practice’; Cordelli refers to a ‘shared institutional space’ and a ‘web of relationships that serve to provide the necessary shared institutional orientation’. Cordelli (n 22) 35–6. For ease, I will refer to an ‘integrative practice’.

³⁷ Harel (n 23) 90–1 (my emphasis).

³⁸ Cordelli (n 22) 38.

³⁹ Harel (n 23) 93.

⁴⁰ Dorfman and Harel, ‘The Case’ (n 23) 79.

⁴¹ Cordelli similarly argues that frontline agents need not be fully deferential to state actors in order for their actions to be appropriately imputed to the state. Frontline agents need only be a ‘part of a unified practice of law-making’, inhabiting a ‘shared institutional space’ and be connected to one another in a ‘web of relationships’. Cordelli (n 22) 31.

⁴² See eg Kieran Oberman, ‘Immigration as a Human Right’ in Fine and Ypi (n 2) 32.

⁴³ Silverman (n 3); Honohan (n 2).

good that only a properly public entity can provide.⁴⁴ Public provision, in turn, requires a bureaucracy, properly understood as an ‘integrative practice’ wherein frontline agents deliberate from the public point of view. Recall that this is more than run-of-the-mill *ex post* accountability in that political control directs the deliberative process *leading up to* a decision. PSCs, charities and civilian gatekeepers, at least in their prominent forms, are *necessarily* excluded from such a practice: PSCs and charities, by the instrument of contract, and civilian gatekeepers, by their very dispersal through civil society. Without an integrative practice, migrants are subject to frontline agents’ private reasons and vulnerable to their unilateral wills—it is *this* claim that precludes many current forms of privatisation in immigration enforcement.

Two problems undermine this conclusion and, I suggest, militate in favour of its opposite. The first is the claim that an integrative practice will eliminate frontline agents’ discretionary decision making—and, indeed, that this is even desirable; the second is the assumption that the state is competent to ascertain and act from the ‘public point of view’ in contexts implicating the interests of outsiders. Both problems undermine the claim that the state is *uniquely* positioned to ascertain and act from the public point of view, which is the basis for the intrinsic objection to privatisation.

First, it is not clear that the distinction between fidelity by reason and fidelity by deference is realisable in practice, or at least to the extent Dorfman and Harel seem to suggest. For one, an integrative practice would still leave a lot of room for discretionary decision making on the part of frontline agents. It is impracticable that political guidance can constrain agents’ deliberations as they are making decisions all the way down. Instead, these agents will reason about the public interest knowing that political guidance or intervention is only potential or prospective. That is, frontline agents act from fidelity of reason subject to *ex post* accountability by political actors—they could never fully suppress their personal judgments to adopt the ‘public point of view’.

More importantly, Dorfman and Harel rely on frontline agents *not* fully suppressing their personal judgment. They carve out a central role for frontline agents’ independent reasoning about the public good and identify two limitations on deference: deference is only called for in roles that are necessary for performing a legitimate state function, and in these roles, deference is only called for when it furthers those functions or values the role it is designed to fulfil.⁴⁵ Importantly, it is the frontline agent in question that determines these two threshold questions. Thus, frontline agents are required to determine, in

⁴⁴ This might be true even with an ontological understanding of ‘inherently public goods’. Contemporary understandings of sovereignty call for effective and ultimate jurisdiction over a particular territory, which involves, *inter alia*, control over entry and exit into that territory.

⁴⁵ Harel (n 23) 103.

accordance with their conception of the public interest,⁴⁶ what counts as a legitimate state function, whether a role is required for its performance, and whether particular tasks or orders associated with that role legitimately further that function. Frontline agents' deference to the 'public point of view' is always contingent on, and vulnerable to, their personal judgements about the public good. Fidelity of reason is prior to fidelity of deference. This is true of the 'sensational',⁴⁷ case of Nazi guards in concentration camps, as well as in more prosaic politics, with election commissions, courts and financial regulators—institutions that ought not be integrated into the deliberations of political actors precisely so that they may more effectively pursue the public interest.⁴⁸ Integrative practices that fully suppress fidelity by reason are unviable and undesirable, at least as far as realising the public interest is concerned.⁴⁹

Public reason, then, is not within the sole purview of the state; moreover, it is not clear the state is even always competent to ascertain and act from public reason. This is commonly the case when the state is captured by non-public interests, or when its institutions are weak and faltering. But this is not merely an observation about the non-ideal nature of most states.⁵⁰ More fundamentally, the state might have a blind spot in contexts, such as migration, that implicate the interests of individuals excluded from the institutions of the state and denied a voice in its affairs. Even an ideal state that secures equal freedom within its borders and amongst its citizens may not act justly with respect to the rights of outsiders, and in fact may be incapable of doing so. Absent an appropriate institutional framework, such as a robust system of international law and governance or mechanisms that attend to the interests and voices of potential migrants, the state may not be a properly public agent in the context of border control. From the perspective of migrants, then, they are not governed by omnilateral rule, but instead are subject to the state's unilateral will.

⁴⁶ Of course, this is not necessarily entirely up to individuals: there may be standards or norms that help agents determine when a political command exceeds the bounds of legitimate state action. Ultimately, however, it falls to the individual to interpret and apply the relevant norm in particular cases.

⁴⁷ Harel (n 23) 94.

⁴⁸ Dorfman and Harel address the case of apolitical public bodies that are not subject to an integrative practice but that they do not deem to be private. They argue that in both cases the state creates an arena of permissibility: for private entities, this arena operates as a right against intervention; for apolitical public bodies, it is an obstacle to political interference. I will argue that it is not the status of the bodies that matters so much as the reasons for which they act, and that the two are inevitably connected. Dorfman and Harel, 'Against Privatisation As Such' (n 23) 21.

⁴⁹ Cordelli anticipates this, and argues that frontline agents need not be fully deferential. Frontline agents must be motivated by appropriate reasons and must deliberate from a shared institutional space created by a collective practice. In short, Cordelli is advocating for frontline agents who demonstrate fidelity by reason and do so in a shared institutional space. This suffices for the relevant unity to exist, she argues, even if it falls short of the deference Dorfman and Harel urge. I explore the implications of her argument in the next section.

⁵⁰ Although it does raise questions about the practical significance of intrinsic arguments against privatisation that idealise the state. Harel notes that the ideals and significance that are attributed to an institution change our understanding of that institution (and arguably have institutional and procedural implications). These ideals, in turn, are useful for identifying where the institution falls short. Harel (n 23) 226.

Intrinsic arguments against privatisation claim that some goods can only be provided by a properly public agent—the state—and that public provision requires frontline agents to be connected to and controlled by the public agent. Central to both claims are the *reasons* for which agents act and the assumption that only the state can act from the public point of view. That is, the intrinsic argument against privatisation relies on and follows from the state's *exclusive* competence to ascertain and act from public reason. I have argued that the state may not be capable of acting as a properly public agent, especially in those contexts that implicate the interests of outsiders. And even if it is, no matter how well integrated they are within bureaucratic practices, frontline agents engage in discretionary decision making and act from their own reasons—this is not only inevitable, but also essential to acting in the public interest. The upshot of this is that the state is not the sole arbiter of public reason nor even, in certain contexts, an entirely effective one. This not only undermines intrinsic arguments against privatisation, but also points towards the roles that private reasons and agents can play in providing public goods. I sketch these below, focusing on the private actors in border control canvassed earlier.

4. *The Roles of Private Actors and Reasons*

If frontline agents need not be fully integrated into bureaucratic practices with state actors, this blurs the distinction between public and private frontline agents. Instead, there is only fidelity of reason with run-of-the-mill *ex post* accountability. What non-public reasons are permissible in the frontline agent's deliberations? And how effective will *ex post* accountability mechanisms be in ensuring that these reasons play an appropriate role in agents' deliberations and actions?

Two preliminary observations about reasons are in order. First, reasons play a variety of roles with respect to an agent's actions: they can serve to justify these actions, to motivate the agent in so acting, and to explain why the agent so acted.⁵¹ For my purposes, the following basic typology will suffice: there are justificatory reasons, which render the agent's actions all-things-considered just; motivating reasons, such as values, commitments, self-interest and beliefs, including about what justice requires, in light of which the agent so acts; and explanatory reasons, which tell us why the agent so acted and which may often be coextensive with her motivating actions.⁵²

⁵¹ Maria Alvarez, 'How Many Kinds of Reasons?' (2009) 12 *Philosophical Explorations* 181, 184–7. Alvarez defends a view that reasons should be distinguished in terms of the roles they play in an agent's deliberation.

⁵² With this typology in place, we can now make sense of Dorfman and Harel's account as one aimed at collapsing together the justificatory, motivating and explanatory reasons for which frontline agents act. Political actors identify the justificatory reasons from which to act, and because of the integrative practice, their reasoning motivates and explains how frontline agents act.

Secondly, this pluralism of roles confounds a simple binary between public and private reasons, for frontline agents may act from private reasons but help secure public ends.⁵³ It is more apt to think of reasons lying along a spectrum, with purely public reason at one extreme and prohibited reasons at the other. Take purely public reason to be the ideal-type of the ‘public point of view’, which perfectly identifies the requirements of justice. Ideally, purely public reason justifies, motivates and explains agents’ conduct in the course of providing inherently public goods. This is rarely, if ever, realisable. At the other extreme are morally prohibited reasons, such as bigotry or sadism, which cannot be justificatory reasons and ought not to be harnessed as motivating reasons. Between the two are what I will refer to as *prima facie* permissible reasons—reasons that, given the right accountability mechanisms, can be harnessed to realise public ends.

A. *Prima Facie* Permissible Reasons

Prima facie permissible reasons range from different conceptions of the public good to Rawlsian public reasons, religiously grounded values of charity and mercy, aesthetic ideals and personal gain. These reasons are championed, variously, by civic-minded citizens, religious bodies, charities, profit-maximising corporations and self-interested individuals. These reasons constitute the ends that individuals and associations embrace, as well as the values they express in their activities.⁵⁴

Mercenary reasons of financial or other personal gain are, on this account, permissible. There is a powerful intuitive dislike for the profit motive, especially in those contexts when individuals’ important interests are at stake—for example, when individuals are incarcerated in private prisons, detained in private immigration centres or subjected to killing. The intuitive dislike responds to two concerns: that it is morally problematic for some to profit from, say, detention, incarceration and killing, and that, as I have already outlined, so profiting drives the expansion of detention, incarceration and killing. The latter is a contingent objection related to corruption more generally and the ways in which private interests distort public policy goals.⁵⁵ The first concern, however, provides an intrinsic objection to mercenary motives. The objection seems to run along the following lines: when individuals’ interests, especially their liberty interests, are at stake, frontline agents ought not

⁵³ Alvarez (n 51) 185. James Brennan critiques more generally the boundaries between public and private activity as ‘fuzzy’. James Brennan, ‘Consequences Matter More: In Defence of Instrumentalism on Private versus Public Prisons’ (2017) 11 Criminal Law and Philosophy 801.

⁵⁴ Chiara Cordelli, ‘The Institutional Division of Labour and the Egalitarian Obligations of Nonprofits’ (2011) 20 Journal of Political Philosophy 131.

⁵⁵ In principle, this can be addressed by more robustly insulating public policy ends from private interests. It may well turn out to be the case that the most effective way to insulate public policy from private interests is to limit the very existence of private interests. However, the consequences of enabling mercenary motives do not, by themselves, mean there is anything wrong *per se* with these motives.

consider personal gain. To do so is to demonstrate an attitude of inadequate respect for the affected individual and inadequate regard for the interests at stake. And when the state countenances these attitudes—indeed, provides a space for and harnesses them—it endorses them, however implicitly. Instead, the argument goes, frontline agents ought to consider only the public interest, and be motivated by the underlying public values and reasons that justify incarceration and detention.

The trouble is, self-interest and personal gain are also relied upon to motivate public officials. Public officials may be given incentives to reach particular performance targets, ostensibly in order to better attain particular public ends. These incentives range from the approbation of one's peers to promotion and to the more directly financial. Not any system of incentives is permissible. For example, consider a system of rewarding officials with gift vouchers, extra holiday time or cash bonuses if they successfully defeat a target number of asylum appeals.⁵⁶ Any intuitive disquiet with such schemes responds to particular features of the scheme rather than the mere fact of a reward. Nominal rewards fail to express adequate regard for the important interests at stake: the prospect of a £25 gift voucher ought not enter into a frontline agent's deliberations when her decisions affect those potentially fleeing (and being forced to return to) persecution. Moreover, these rewards are not appropriately directed. To reward government officials for successfully defeating asylum appeals casts asylum seekers as adversaries of the state. From the public point of view, however, the state has an interest in the fair and accurate assessment of asylum claims in fulfilment of its international obligations and duties of justice. *This* may be encouraged by rewarding, for example, those officials whose initial assessments are not successfully appealed.⁵⁷ Mercenary and self-regarding motives are not within the sole purview of private corporations and they are not impermissible *per se*; what matters is the constraints within which they are permitted to operate and the ends to which they are directed.

Now consider religious motivations. A member of a religious organisation contracted to deliver basic welfare in a refugee camp may be motivated by a religious edict to alleviate suffering or a desire to gain divine grace. Religiously grounded values of compassion and charity may inform her interactions with

⁵⁶ For example, the Home Office in the United Kingdom rewards officials who win 70% of appeals made against unsuccessful applications for asylum. Rewards include gift vouchers, cash bonuses and extra holiday. Diane Taylor and Rowena Mason, 'Home Office Staff Rewarded with Gift Vouchers for Fighting Off Asylum Cases' *The Guardian* (London, 14 January 2014) <<https://www.theguardian.com/uk-news/2014/jan/14/home-office-asylum-seekers-gift-vouchers>>.

⁵⁷ Providing substantial end-of-year bonuses to officials some percentage of whose initial asylum assessments are undefeated on appeal would demonstrate a commitment to ensuring fair and accurate asylum determinations. This would depend on, among other things, an accessible appeals process. It might well also encourage a *laissez-faire* asylum process, wherein officials tend to be too lenient in their initial assessments. Of course, any system of rewards, incentives and targets is prone to abuse and misdirection: the reward obscures the underlying values and aims of the enterprise, and can become the goal itself. This is true of *any* organisation, whether public or private.

refugees, the ways in which she interprets policy prescriptions, perhaps a tendency to err on the side of generosity. This is permissible within certain constraints: the religious frontline agent may show compassion, but could not discriminate on the basis of religious identity or vigorously proselytise.⁵⁸ Accountability mechanisms are essential to ensuring that *prima facie* permissible reasons are in fact permissible.⁵⁹

B. *Ex Post* Accountability

Prima facie reasons are those reasons that are not intrinsically objectionable in the pursuit of public ends. They do, however, require robust mechanisms of accountability. Institutions—organisational structures, contractual terms, behavioural norms—can be designed with a view towards realising public reason and suppressing morally objectionable ones, while engaging with the plurality of reasons in between. Consider when a state outsources delivery of a public good to a profit-maximising firm—an example often cited as uncongenial to public accountability because of the instrument of contract. In the typical case, the frontline agents are employees of a private firm whose contractual terms specify provision of the good, spelled out in terms of targets, standards or principles. Frontline agents are accountable to the owners of the firm and to the state—either directly, for example through monitoring, or indirectly, through their clients who, as citizens, can appeal to the state in the case of inadequate provision. Accountability to the owners and to the state means that frontline agents, acting from self-interested reasons, will seek to deliver policy outcomes efficiently and to an adequate standard—to the benefit not only of the firm's owners, but ultimately also to that of the public.⁶⁰ In principle, then,

⁵⁸ See eg Cordelli (n 22) 140; Patrick Kingsley, 'Aid Workers Accused of Trying to Convert Muslim Refugees at Greek Camp' *The Guardian* (London, 2 August 2016) <<https://www.theguardian.com/world/2016/aug/02/aid-workers-accused-of-trying-to-convert-muslim-refugees-greek-camp-detention-centre-lesvos-christianity>>. Religious volunteers at a refugee camp have greater expressive freedom, although arguably this is curtailed when they provide essential goods and exercise quasi-governmental power over others. See Jennifer Rubenstein, 'The Misuse of Power, not Bad Representation: Why It Is Beside the Point that No One Elected Oxfam' (2014) 22 *Journal of Political Philosophy* 204.

⁵⁹ If a frontline agent's self-interested or sectarian motivations are permitted, even when these motivations find expression—within limits—in her conduct, then it might seem that *all* motivations are *prima facie* permissible reasons. Suppose the state wants to hire a private entity to supplement local border patrol. Thanks to their ideological commitments, it turns out that a white supremacist organisation would be most efficient: their members are diligent and inventive, and so apprehend unauthorised entry most effectively, and they are willing to patrol the border at a lower cost. Suppose oversight mechanisms successfully ensure that frontline agents' morally objectionable motivations do not find expression—for example, there is no increased incidence of physical force or verbal abuse—so that the white supremacist agent's performance is indistinguishable from any other's performance. We might worry that the state implicitly endorses these reasons when it is willing to harness them and when it provides an avenue in which individuals can pursue these reasons. Or at least, that it expresses such endorsement. Now, the state could counter any implied endorsement by issuing a public statement truthfully and emphatically iterating its commitment to equality and non-discrimination. It is unclear, however, that any such public disavowal would be effective, and indeed might be counter-productive if the state appears to be protesting too much. Certain reasons may be so antithetical to the public good that relying on them as a means to secure a public end expresses a set of values that undermines that, and other, public ends. I am grateful to Richard Ekins for pushing me on this point and for his helpful counterexamples.

⁶⁰ Mark H Moore, 'Public Values in an Era of Privatization' (2003) 116 *Harv L Rev* 1212.

the instrument of contract need not sever or debilitate mechanisms of public accountability: the state can stipulate high standards, robust and frequent monitoring, and specialist training of employees. Even if it does not do this of its own accord, the state, and indirectly the firm, is held accountable through citizens.

In the case of border control, however, the ties of public accountability are far more tenuous. There is a divergence between the beneficiaries of the good—citizens—and the recipients of its provision—migrants. Migrants are *objects* of border control, unable to hold either the firm or the state directly accountable. It is unlikely that they can rely on their states of origin to protect their interests.⁶¹ They may rely on a constituency of citizens to agitate on their behalf and thereby hold the state and the firm to account; however, this still leaves migrants vulnerable to the goodwill of others, and hence in a position of being dominated.⁶² Absent this goodwill, frontline agents are accountable only to the firm's owners; they are therefore incentivised to maximise profitability without any countervailing pressure to maintain adequate standards. Although mercenary motives are permissible in the delivery of public goods, this is only when they are sufficiently constrained through effective mechanisms of accountability that ensure quality. In contexts where clients are unable to hold frontline agents to account, and where the state does not do this of its own accord, mercenary motives are unfettered and tend towards abuse.⁶³

This analysis might seem to speak in favour of outsourcing to some private actors in the volunteer sector. When the frontline agent is an employee of an organisation whose owners, so to speak, are committed to the welfare of migrants, the frontline agent is incentivised to attend to migrant welfare, even in the absence of altruistic motivations and without effective oversight from the state. Not only do the organisational commitments provide for some alignment, but they also introduce into the pool of reasons the interests and perspectives of migrants—reasons that are otherwise absent when ascertaining the public point of view. But this would still require mechanisms of accountability: first, to ensure that the organisation's owners are in fact responsive to the interests of migrants; and secondly, to ensure that frontline agents' pursuit of these interests is not to the exclusion of providing effective border control or doing so efficiently—that is, that frontline agents pursue the public interest, of which migrants' welfare is only one element. Although the state might be effective in providing oversight with respect to the latter, it faces the same problems with

⁶¹ This is especially the case with migrants fleeing their countries of origin because of persecution, conflict, poverty or general public disorder. These are states that likely are not willing or capable of acting on behalf of their citizens abroad. In any event, because immigration control is treated as an administrative act, the usual privileges of consular protection do not apply.

⁶² And this vulnerability is particularly acute since the interests of migrants and citizens may diverge. For citizens, adequate border control may be understood as effective border control; for migrants, it may be understood as humane and rights-respecting control.

⁶³ Arguably, this would apply to vulnerable citizens, such as prisoners, the mentally infirm and the young, who are less capable of using the state to hold frontline agents accountable.

the former as it does with profit-maximising firms. Moreover, the more that volunteer organisations are rendered publicly accountable, the less they are able to express and act from their particular values and commitments, and to introduce these values and commitments into the delivery and definition of public goods.⁶⁴

Private actors can supplement or correct the state's particular understanding of the public interest and appropriately inform its ends when delivering public goods. This seems especially to be the case when the institutions of the modern state are not equipped to reach all affected individuals—such as would-be migrants—and incorporate their perspectives and interests into its articulation of the public interest. As many have noted, would-be migrants' exclusion from a state's institutions can render that state's border control dominating. Non-state actors, from transnational PSCs to humanitarian organisations, may introduce into their execution of the state's commands values and reasons that render those commands more just and more in line with the public interest, properly understood. Indeed, their competence in the right reasons may rely on their being separate from the state. Institutional constraints determine the scope for their expression and the ends to which they are directed—properly enforced, they allow for the introduction of a variety of values and reasons that the state may not be able to articulate, whilst ensuring that individuals are not at the mercy of a frontline agent's private reasons or sectarian preferences. What is precluded, then, are those forms of privatisation that are insufficiently connected to public accountability—certain civilian gatekeepers, for example—or that require or rely on agents to act for impermissible private reasons.

5. Conclusion

Private contractors were initially used in immigration detention because police officers were deemed too oppressive for those not accused or guilty of any crime.⁶⁵ It is worth remembering this since, in the intervening decades, the perception of private contractors has transformed radically, at least in some quarters. Reports of human rights abuses and worries that powerful private entities are dictating government policy to the detriment of public finances and the dignity of migrants have fuelled objections to privatisation in immigration enforcement. Private actors in border control are often agents of injustice in migration, exacerbating the myriad other injustices associated with migration; it is therefore tempting to find privatisation in border control inherently wrong.

⁶⁴ This dilemma was evident in the charity Barnardo's partnering with G4S to run an immigration detention facility for families and young children. By representing the interests of migrants in the *delivery* of detention, they were less able to represent these interests with regard to *ending* the policy of immigration detention.

⁶⁵ Christine Bacon, 'The Evolution of Immigration Detention in the UK: The Involvement of Private Prison Companies' (2005) Refugee Studies Centre Working Paper 27.

In this article, I have sought to determine whether there are any such intrinsic objections to privatising border control. I have drawn from intrinsic arguments against privatisation, in particular the arguments powerfully and evocatively advanced by Avihay Dorfman and Alon Harel. These arguments do not focus on privatisation so much as they do on the state. The state is held up as the sole arbiter of the public good, uniquely capable of ascertaining the public point of view, and acting so as to preserve the equal freedom of all. Using resources from their arguments, I have argued the opposite: frontline agents can also ascertain and act from public reason, and we rely on them to do so; and in any event, the state is ill-equipped to articulate the public point of view when the interests of *non-members* are at stake. As such, not only is privatisation not impermissible *per se*, but, in non-ideal circumstances, it can even be in service of the public good. Private actors embody and express a range of non-public reasons. These reasons can be drawn upon to motivate them to pursue properly public ends, and these reasons can properly inform the content of those ends.

For either public or private border control to comport with public reason, appropriate institutions of accountability are essential. In the context of border control, however, there is an accountability gap: migrants are effectively invisible and voiceless, incapable of asserting their interests and holding directly to account those who infringe them. Rather than add layer upon layer of bureaucracy to create an ever more integrated practice, accountability may more effectively come from without the chain of delegation—from, for example, international and regional agreements on migration, empowered international monitors, shared codes of best practices amongst private actors, and activist citizens. In short, border control would have to become a practice in which migrants are participants rather than objects.

To argue that there is nothing intrinsically wrong with *privatising* border control is not to sound a complacent note on the several and persistent abuses that attend privatisation; it is only to argue that such abuses do not inevitably attend privatisation, nor are they inevitably avoided by the state. If the state has a blind spot, it also turns a blind eye. By outsourcing performance to private actors, the state is able to pursue ends that are not subject to scrutiny from other state agencies, civil society actors or the media. Privatisation can thus be a mechanism for state obfuscation. If privatisation is widely associated with abuse, it may be because the relevant state allows it to be so or looks the other way, in which case it is not the sort of public institution we should turn to for better or more legitimate outcomes.